



New South Wales
Council for
Civil Liberties

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Citizenship Test Review Committee
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Dear Committee ,

Submission to the Citizenship Test Review Committee.

The New South Wales Council for Civil Liberties ('CCL') is committed to protecting and promoting civil liberties and human rights in Australia.

CCL is a Non-Government Organisation (NGO) in Special Consultative Status with the Economic and Social Council of the United Nations.

CCL was established in 1963 and is one of Australia's leading human rights and civil liberties organisations. Our aim is to secure the equal rights of everyone in Australia and oppose any abuse or excessive power by the State against its people.

The New South Wales Council for Civil Liberties (the CCL) is grateful for the opportunity to make a submission to the Committee. We would be happy to elaborate on any matters, in writing or in person, that the Committee may wish.

Summary of Recommendations.

Recommendation 1. That the Review Committee investigate whether the introduction of the citizenship test is responsible for the decline that has been reported in applications for citizenship, and whether any groups are particularly affected.

Recommendation 2. That the Committee determine whether the problems with the test can be met or sufficiently alleviated by modifications to the *Australian Citizenship Act 2007* and to the test, or whether the test should be abandoned.

Recommendation 3. That the Committee find that it is not appropriate to test much of the material in the booklet *Becoming an Australian Citizen*. Some but by no means all of that material would be usefully included in educational materials prospective citizens should be given.

Recommendation 4. That the Committee determine whether the Department of Immigration and Citizenship retains the self-protective and defensive culture for which the former Department of Immigration and Multicultural and Indigenous Affairs was

criticised by the Palmer Report, and whether in consequence it is an inappropriate body to be formulating the test.

Recommendation 5. That the Committee recommend that the test be published for public comment prior to finalisation and that it be approved by a consultative committee, broadly representative of the community.

Recommendation 6. That the Committee recommend that Subsection 23A(7) of the Act be replaced by a provision guaranteeing a right to parliamentary review of the test contents.

Recommendation 7. That the Committee find that there is no obligation upon new citizens of a country to adopt the values held in that country, and accordingly no obligation upon new Australian citizens to adopt "Australian values".

Recommendation 8. That the Committee find that in a democratic country people are entitled to differ on matters of value, that there is a democratic entitlement to challenge existing values, and that there are important differences in values between Australian citizens.

Recommendation 9. That the Committee recommend that knowledge of a set of supposed "Australian values" and adherence to those values should not form part of the citizenship test.

Recommendation 10. That if Recommendation 9 is not accepted, the Committee recommend that the test of values be limited to testing an understanding of those values that are required for the functioning of a democracy.

Recommendation 11. That the Committee recommend that the citizenship test should not be used to determine a candidate's knowledge of English.

Recommendation 12. That the Committee recommend that if the test is to continue, it should be made available in languages other than English.

Recommendation 13. That the Committee recommend that a course covering citizenship material and basic English be made available to residents, and that attendance at such a course be made an alternative to sitting the test.

Recommendation 14. That the Committee recommend that the Minister be given power to grant exemptions from sitting the test to persons whose circumstances warrant it, and that an administrative review be available for those denied such an exemption.

Recommendation 15. That the Committee recommend that if the test is maintained, there should be a further review of its effect after another three years.

Submission

A. Abolition or modification of the test.

1. The *Australian Citizenship Act 2007* gives a broad and uncontrolled discretion to the Minister in setting the citizenship test: a discretion which is open to use in the service of discrimination. In particular, the stipulation that prospective citizens must have 'an adequate knowledge of Australia' leaves it open to the Minister to require candidates to learn quantities of more or less useless facts, depending on what he or she believes to be important.

There are good examples in the sample questions which are listed in the Citizenship booklet.¹ The date of Federation, the name of Australia's first prime minister, the colours on the Australian flag and the floral emblem are of no significance whatever. Applicants for citizenship should not have to memorise such material.

The booklet itself includes sections which have no relation whatever to the obligations of citizens. Citizens have no obligation to know anything about cricket, and absolutely no obligation to support Australian sports teams. (Many citizens do not.) They have no obligation to know anything whatever about horse racing.

2. Immigrants enrich Australia both economically and socially. The citizenship test should not have the effect of diminishing incentives to apply for citizenship. There has been a substantial reduction in the number of people applying for citizenship since the test was introduced. The figures are dramatic:

Year	Number of persons who applied for Australian citizenship ²
2001-2002	86,289
2002-2003	79,164
2003-2004	87,049
2004-2005	93,095
2005-2006	103,350
2006-2007	136,256 or 169,123 ³

¹ The CCL understands that these sample questions are not all in fact included in the test. The fact that they could even be suggested is of concern.

² These numbers are sourced from the Department of Immigration's annual reports

³ The Department of Immigration and Citizenship appears to have published inconsistent numbers: according to the annual report for 2006-2007 (published at <http://www.migration.gov.au/about/reports/annual/2006-07/html/appendices/citizenship-statistics.htm>), the number is 136,256; according to the fact sheet available at <http://www.citizenship.gov.au/resources/facts-and-stats/stats.htm>, the number is 169,123.

	Number of persons who sat the Citizenship Test
6 month period 1 October 2007 to 31 March 2008	25,067

As at 30 June 2007, more than 900,000 permanent residents were eligible to become Australian citizens. Not all of those people are disenfranchised, as British citizens who have been on the electoral roll since before January 1984 remain entitled to vote.⁴

For the purposes of comparison, the 2006-2007 numbers should probably be disregarded, as the proposal to introduce the citizenship test was well publicised during that period and most probably induced people to obtain citizenship before its introduction.

However, even if that number is disregarded, it is clear that the current number of people sitting the test represents a significant reduction in the numbers of people adopting Australian citizenship compared to the 5 year period prior to announcement of the intention to introduce the test.

It is likely that the requirement to sit the test is acting as a disincentive. In our view, the Committee should seek further evidence about this, ascertaining if there are groups who are particularly affected, and determine (i) whether a modification of the test will resolve the problem, or (ii) whether instead of the test, prospective citizens should attend a course appropriate to their background, or (iii) whether the test should be abandoned.

3. It is likely that the number of disenfranchised permanent residents otherwise eligible to become Australian citizens will increase significantly from the number as at 30 June 2007.

It is not desirable that there be a continuing and growing disenfranchised minority of residents in Australia.⁵ Denying citizenship (and hence enfranchisement) on other than security grounds is antidemocratic. It is also dangerous. It is a recipe for discrimination and alienation. It can produce a disaffected minority, feeling powerless and harbouring resentment.

4. CCL does not believe that anything is to be gained from testing an applicant's English language proficiency by means of such a test, or testing their knowledge of Australia and 'Australian values'. Educating new citizens about Australian democracy and law, as well as the English language, is important. But testing applicants opens the process to discrimination on the basis of language ability and testing competence. This may lead to frustration and disenchantment with the process of applying for Australian citizenship and might devalue citizenship in the eyes of some of those involved.

⁴ In 1996, Gerard Henderson estimated the number of British citizens on the electoral roll at about 300,000 (<http://www.ausflag.com.au/debate/nma/smh960910.html>).

⁵ Because those eligible are by definition already permanent residents, the test effectively prevents the enfranchisement of people who will be living in Australia anyway. See Costar, Brian and Mares, Peter, 'Citizenship: a test that will divide, not unite', *Australian Policy Online*, 14 December 2006.

Further, testing applicants' knowledge of the approved answers to a set of questions does nothing to distinguish those who will make good citizens from those who will not.

5. In summary, the CCL believes the test is open to abuse, is likely to discourage and is probably already discouraging applications for citizenship, and is useless for the purpose for which it was introduced. If it is not to be abandoned, as we would prefer, the legislation should be modified to reduce these problems.

Recommendation 1. That the Review Committee investigate whether the introduction of the citizenship test is responsible for the decline that has been reported in applications for citizenship, and whether any groups are particularly affected.

Recommendation 2. That the Committee determine whether the problems with the test can be met or sufficiently alleviated by modifications to the *Australian Citizenship Act 2007* and to the test, or whether the test should be abandoned.

B. The test and the booklet.

1. The booklet *Becoming an Australian Citizen* includes:
 - material on "Australian values" (pp. 5-7),
 - a potted and partial⁶ history of immigration to Australia (p. 9),
 - a miscellaneous collection of facts about Australian geography (pp. 8, 11-13),
 - some trivial facts about Australian flags, the coat of arms, the anthem and other symbols (pp. 14-16),
 - a brief eclectic history of European Australia, with heavy emphasis on explorers, convicts and wars (pp. 17-23),
 - some mainly constitutional history larded with "interesting facts", unconnected with anything around them (pp. 24-25),
 - some sections on sport (pp. 26-27),
 - a list of Nobel Laureates (p. 31) with no connection to anything before or after it,
 - and a section on Indigenous Australians (pp. 32 and 33).

While some (but by no means all) of this material is of potential interest and use to new immigrants, none of it is appropriate for inclusion in a test. If the test is to continue, it should be limited to the rights and duties of citizens, and enough basic material on the democratic system of government for immigrants to make sense of those rights and duties.
2. The booklet appears to be attempting to provide a variety of material that will help an immigrant to understand what kind of a country they have come to, and

⁶ There is no mention of refugees, for example.

its life and culture. This is a worthwhile aim. Indeed, the CCL argued in a previous submission on the test that new immigrants should be offered education on such matters.

Combining that interesting material with that which is suited to testing, however, leaves the booklet schizophrenic, and may well make potential citizens confused and apprehensive. (They might ask what kind of government wants them to know the name of a horse.)

Recommendation 3. That the Review Committee find that it is not appropriate to test much of the material in the booklet *Becoming an Australian Citizen*. Some but by no means all of that material would be usefully included in educational materials prospective citizens should be given.

C. The process by which the test is produced.

1. The Palmer Report into the Cornelia Rau affair described staff in the compliance and detention sections of the then Department of Immigration and Multicultural and Aboriginal Affairs as having heavy workloads, and as trying to operate effectively despite instructions which inhibit or prevent effective performance. There were serious cultural problems, with the Department's officers being overly self protective and defensive and unwilling to engage in self-criticism or analysis.⁷

That culture spread beyond the compliance and detention sections, to senior members of the Department. The result was that children were kept in immigration detention long after it was clear that the circumstances in which they were kept were causing serious clinical depression. Truly extraordinary discipline procedures carried out by Global Solutions Limited were condoned or ignored. It was involved in substantial infringements of human rights.⁸

The Review Committee should determine whether that culture pervades the Department still, and whether it is an appropriate organisation to be testing anybody's understanding of democracy, and especially of democratic values.

2. There is a risk that the test and the test booklet will provide unintended difficulties for prospective citizens because of the language involved,⁹ or cultural misunderstanding. Questions may have more than one plausible answer.¹⁰ The test should be referred to a consultative committee broadly representative of the

⁷ Commonwealth of Australia, *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, (The Palmer Report), 2005 p. ix

⁸ Some horrible examples may be found in Burnside, Julian, *Watching Brief: Reflections on Human Rights, Law and Justice*, Scribe, Melbourne, 2007 pp. 37-41. The CCL is able to provide substantial elaboration of this point should the Inquiry so desire.

⁹ For instance, the booklet repeatedly uses the word 'migrant' in its non-standard, Australian meaning of 'immigrant'.

¹⁰ For instance, the sample question 'Who is the head of the Australian Government?' which permits of at least four sensible answers.

community for comment before it is adopted. A draft should also be available for public comment.

3. Parliament at the very least should be able to question and amend the test. Accordingly subsection 23A(7), which provides that the test is not a legislative instrument, should be replaced by a provision guaranteeing a right to review by Parliament.

Recommendation 4. That the Review Committee determine whether the Department of Immigration and Citizenship retains the self-protective and defensive culture for which the former Department of Immigration and Multicultural and Indigenous Affairs was criticised by the Palmer Report, and whether in consequence it is an inappropriate body to be formulating the test.

Recommendation 5. That the Committee recommend that the test be published for public comment prior to finalisation and that it be approved by a consultative committee, broadly representative of the community.

Recommendation 6. That the Committee recommend that Subsection 23A(7) of the Act be replaced by a provision guaranteeing a right to parliamentary review of the test contents.

D. Testing Values.

1. There is no general obligation on those who seek citizenship of a country to adopt the values that are widespread in that country. To suppose otherwise is to imply that persons seeking citizenship of Nazi Germany had an obligation to adopt the values of Nazism.

There is, accordingly, no obligation on persons seeking to become citizens of Australia to adopt values that are widespread in Australia simply because they are widespread or are thought of as part of Australian culture. To suppose that there is is to imply that people who came here in the 1930's should have adopted the racist views common at the time; should have been required for example to accept that cross-racial marriage involved a disgraceful activity called 'miscegenation'. The Review Committee should make a finding to that effect.

2. A free and democratic society recognises and respects the diversity of values held by its citizens. Thus an essential feature of Australia's democratic system of government is that citizens are entitled to differ on matters of political opinion and on matters of values. A process which seeks to discriminate against people based on their holding particular values is contrary to the essentially democratic nature of Australia's system of government.

There is a related democratic entitlement to seek to change the values held by a majority of the citizens of a country. People are entitled to take the view that they have a moral obligation to persuade other people to change their minds. An example is the endeavour that was made during much of the twentieth century to change people's minds about the morality of homosexual activity between consenting adults.

3. The values held by Australians are not homogeneous. They evolve and change in different directions and at different paces. Once it is recognised that a moral principle means different things to different people, it will be seen that virtually no values can be identified which are universally held by Australian citizens. It is obscure then what criteria are supposed to determine what are Australian values and what are just widely held ones. Are they values which are supported by legislation? In that case it would be “un-Australian” to support same-sex marriage. Are they values which the great majority of citizens hold? In that case in the 1960’s they would have included the double standard of sexual morality.
4. Attempts to impose a set of values will thus be divisive. Further, since many people link their values to their religions, such attempts may deepen religious animosities. There is a risk, indeed, that the test of shared values may become a test of religious belief or knowledge. The test may already be alienating and excluding some potential applicants.
5. New citizens are required to pledge their loyalty to Australia and its people, and to declare that they share their democratic beliefs and that they respect their rights and liberties. It is necessary for new citizens to embrace democratic values in order to ensure a well-functional civil society, and a continuing renewal of governmental accountability. These are facts and values that are necessary to the functioning of a free state. That should be enough. Peripheral cultural values should not be required of any new citizen.

Recommendation 7. That the Review Committee find that there is no obligation upon new citizens of a country to adopt the values held in that country, and accordingly no obligation upon new Australian citizens to adopt “Australian values”.

Recommendation 8. That the Committee find that in a democratic country people are entitled to differ on matters of value, that there is a democratic entitlement to challenge existing values, and that there are important differences in values between Australian citizens.

Recommendation 9. That the Committee recommend that knowledge of a set of supposed “Australian values” and adherence to those values should not form part of the citizenship test.

Recommendation 10. That if Recommendation 9 is not accepted, the Committee recommend that the test of values be limited to testing an understanding of those values that are required for the functioning of a democracy.

E. Accessibility.

1. The CCL supports making English language education freely available to potential citizens and residents of Australia. However, we are concerned about the requirement that the test be taken in English. The level of proficiency required to understand the booklet is more than basic, even though efforts have

been made to write the material simply. This creates barriers to citizenship, deterring people from applying and making it difficult for them to pass.

2. The convenience of day-to-day life already provides a sufficiently strong incentive for residents to learn English over time. The Act requires only a basic knowledge of the English language.¹¹ It is unnecessary and divisive to maintain a penalty for not learning it beyond this level.
3. Requiring fluency in English discriminates against people whose situations do not allow them to learn English well—for example age, past experience of torture or trauma, intelligence levels, and economic circumstances that make learning English difficult (e.g. long work hours and/or childrearing responsibilities).
4. It is insulting to many Australians to imply that they cannot contribute meaningfully to Australian society. While fluency in English is an advantage, and instruction in it should be readily available, it is not a prerequisite for becoming a productive member of Australian society, as has been proven by the many diverse immigrants who have contributed to making the nation what it is today.¹² Non-English speaking residents and citizens can quite effectively raise families, work, volunteer their time to help others and remain informed through the non-English language media.
5. The CCL does not believe it is reasonable to expect every Australian to speak English. There are Indigenous Australians who do not speak English. There are many reasons why a person might not be able to read English. Some immigrants might barely be able to read and write their native language.
6. If non-English speaking applicants are required to take the citizenship test, it should be provided in a language of their choice. Special arrangements should also be made for those who are not computer literate and those whose literacy skills are low.

Furthermore, the Act should be altered to provide alternatives to the test. For example, in the United Kingdom, citizenship applicants who have not attained a certain level of proficiency in English can satisfy the citizenship test requirement by attending an English for Speakers of Other Languages course, which covers citizenship materials. In this system, the focus is on educating instead of screening future citizens.

Recommendation 11. That the Review Committee recommend that the citizenship test should not be used to determine a candidate's knowledge of English.

¹¹ At 21(2)(e).

¹² See Cica, Natasha, 'Who are the Australians', *The Age*, 19 September 2006.

Recommendation 12. That the Committee recommend that if the test is to continue, it should be made available in languages other than English.

Recommendation 13. That the Committee recommend that a course covering citizenship material and basic English be made available to residents, and that attendance at such a course be made an alternative to sitting the test.

F. Exemptions.

The Act does not apply the test requirement to persons over 60 or under 18 years of age, to those who are stateless and to those with certain disabilities. However there may be special circumstances which would justify exempting a person from the requirement. The Minister should be able to grant that exemption, with an administrative review of his or her decision being available. An administrative review should also be available in relation to unfair testing conditions.

Recommendation 14. That the Review Committee recommend that the Minister be given power to grant exemptions from sitting the test to persons whose circumstances warrant it, and that an administrative review be available for those denied such an exemption.

G. Further review

Recommendation 15. That the Committee recommend that if the test is maintained, there should be a further review of its effect after another three years.

June 2008